

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

MV TRANSPORTATION, INC.

Case 19–CA–279935

and

COMMUNICATION WORKERS OF AMERICA,
LOCAL 7800.

Carolyn McConnell, Esq.,
for the General Counsel.
Kerry S. Martin, Esq.
(*Fisher & Phillips, LLP*), for the Respondent.

DECISION

STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, Administrative Law Judge. This case was tried using the Zoom for Government video platform on January 25, 2022. Communication Workers of America Local 7800 (the Union or Charging Party) filed the charge on July 14, 2021, and the General Counsel issued the complaint on October 15, 2021. MV Transportation, Inc. (the Respondent or Employer), filed a timely answer denying all material allegations.

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (the Act), when it failed and refused to timely furnish the Union, since July 2, 2021¹, with the Respondent's client's Microsoft financials information requested and/or has failed and refused to bargain with the Union over the confidentiality of the requested information regarding the Microsoft financials regarding its contract with Respondent. For the reasons detailed below, I find the General Counsel has met the burden to prove this allegation by a preponderance of the evidence.

¹ All dates are in 2021 unless otherwise noted.

On the entire record,² including my observation of the demeanor of the witnesses, and after considering the General Counsel's and Respondent's closing briefs,³ I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, operates as a transportation services company throughout the United States, including out of a facility in Redmond, Washington (its facility), where it annually derives gross revenues in excess of \$500,000, and purchases and receives goods at its facility location valued in excess of \$50,000 directly from points outside the State of Washington. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

Respondent and the Union have had an ongoing collective-bargaining relationship, the most recent embodied by collective-bargaining agreement from July 1, 2018, through November 30, 2020, which has been extended month-to-month since then (CBA). (Tr. 83; Jt. Exhs. 1 and 2.) The parties have maintained a collective-bargaining relationship since at least 2011. (Tr. 19.)

Unit members are comprised of approximately 400 members and are mostly drivers – connector drivers and shuttle drivers, some dispatchers, ambassadors, operation and payroll clerks, and utility workers including employees who clean buses. (Tr. 19, 83.) Specifically, the unit is identified as a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time drivers, dispatchers, utility workers, payroll clerks, operations clerks, and ambassadors at MV Transportation, Inc. Division 105, but excluding all other mechanics, maintenance employees, guards, supervisors and road supervisors as defined under the National Labor Relations Act.

² The transcripts and exhibits in this case generally are accurate. However, I hereby make the following corrections to the trial transcripts: page (p.) 63, line (l.) 23 & 24: "Joint Exhibit 8" should be "Joint Exhibit 7;"

³ Abbreviations used in this decision are as follows: Transcript citations are denoted by "Tr." with the appropriate page number; citations to the General Counsel exhibits are denoted by "GC"; "Jt. Exh." for a joint exhibit; "R Br. for Respondent's closing brief; and "GC Br." for General Counsel's closing brief. Although I have included several citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record.

This driving service provided by Respondent and the Union is a result of Respondent's contract with Microsoft Corporation (Microsoft) to provide connector and shuttle bus, and dispatcher service for Microsoft and its employees at Microsoft's campus in Redmond, Washington.

Connector drivers pick up Microsoft employees at various park and rides around the Microsoft campus in the morning and in the evening while shuttle drivers drive employees around Microsoft's campus all day long. (Tr. 19.)

Jeanne Stewart (Stewart) has worked as a union staffer representative at the International Union since November 2015, and participates in contract bargaining with local branches of the International Union, conducts training, works on grievances, attends arbitrations, and generally helps out the local Union. (Tr. 58.)

Arthur Clemens, Jr. (Clemens) is the Union's president and he reports to Stewart and Clemens also works in resolving grievances of union members, he negotiates the ongoing CBA relationship between Respondent and the Union, he attends bargaining sessions with other union representatives, such as Stewart, and Respondent's representatives to discuss current and future CBAs, and he also participates in conflict resolution. (Stip. Fact # 11; Tr. 18, 20.)

Clemens opines that Stewart works with him to attend bargaining sessions and that Stewart frequently interacts directly with Respondent's human relations department and management representatives (HR) and that Stewart maintains bargaining notes from the CBA bargaining sessions she attends with Clemens. (Tr. 20.)

In 2020 and 2021, the Union's bargaining team was comprised of Clemens and Stewart and Wendy Rendelman (Rendelman), a shuttle driver and current area representative for the Union, and Diane Tarantino (Tarantino), a connector driver and area vice president. (Tr. 28.)

Also, in 2020 and 2021, in the course of CBA negotiations, the topic of Microsoft has come up several times. (Tr. 20.) Clemens recalled that on one occasion, Respondent came to Clemens and the Union on behalf of Microsoft and Respondent indicated that Microsoft had asked that one or more driver employees be removed and terminated from work at the Microsoft campus for things done there and this driver employee was dismissed from employment. (Tr. 20, 23–24.)

On another occasion, Clemens recalled that Respondent brought to CBA negotiations the fact that Microsoft wanted to provide a temporary boost of hourly wages for union employees and this request was granted. (Tr. 20–21.)

Clemens also recalled that prior to the CBA starting on July 1, 2018, Respondent communicated to Clemens and the Union that due to an increased cost of living and because Respondent wanted to retain its drivers for the Microsoft contract, Microsoft wanted Respondent to give union employees a \$2-hourly wage increase. (Tr. 21–22.)

Clemens also provided that he was working with Mike Haner (Haner), Respondent's former director of operations when this \$2-hourly wage increase was worked out. (Tr. 21.) Haner was replaced by Mark Moujabber (Moujabber) in CBA negotiations after July 2018. Id.

5 In contract negotiations and collective bargaining between the Union and Respondent after July 1, 2018, Clemens has worked with Respondent's representatives, Patrick Domholdt (Domholdt), Respondent's director of labor relations since 2016, and two managers who either supervise Domholdt or hold positions senior to him at Respondent—Kimberly Borden (Borden) and Moujabber, Kristee Crowder (Crowder) and occasionally Wes Smith (Smith), Martin
10 Grungefield (Grungefield), and Tim Fournier (Fournier). (Tr. 22, 28, 83; Jt. Exh. 4.)

Domholdt has been employed by Respondent since July 2016 as its director of labor relations through the date of hearing. (Tr. 77.) Domholdt's work at Respondent covers various geographic territories such as Nevada, Colorado, Northern California, Central Valley California,
15 Alaska, Oregon and Washington. (Tr. 77–78.)

Domholdt opines that he is responsible for representing the Respondent in all facets of labor relations including contract negotiations for approximately 30 regions with about 40 different CBAs. (Tr. 78.) Like Clemens and Stewart for the Union, Domholdt attends bargaining
20 sessions for Respondent, handles grievances and arbitrations and testifies at unfair labor practice hearings on behalf of the Respondent. Id.

Domholdt is familiar with Respondent's Division 105 called its Redmond Division which involves contracting with Microsoft and its different types of drivers' routes, fixed commuter
25 routes and different on-demand shuttle services. (Tr. 78–79.) In sum, Domholdt explains that Respondent provides Microsoft with shuttle servicing, dispatchers, customer service reps to provide transportation to different Microsoft employees to their Redmond campus in Washington. (Tr. 79.)

30 Domholdt refers to Respondent's contract agreement with Microsoft as a master service agreement or as a revenue agreement with Microsoft as the client (the Microsoft contract). (Tr. 79; Jt. Exh 10.) Domholdt further describes the Microsoft contract as 20–25 pages mostly with boilerplate language of a typical master services agreement with approximately eight exhibit
35 appendixes that involve specific terms of service, client vehicle inventories, different route structures and service areas, and financial pricing information that get incorporated into the master agreement. (Tr. 79–80; Jt. Exh. 10.)

Domholdt further explains that the Microsoft contract contains an exhibit specifically dealing with Microsoft financials which he identifies as Exhibit C to the Microsoft contract,
40 approximately 33 pages consisting of spreadsheets and charts and covers labor costs, other variable costs, fixed costs, management/administrative fees and Respondent's charge to Microsoft for providing its services. (Stip. Fact # 16; Tr. 81–83, 98–99.)

Domholdt opines that generally contained in this Exhibit C Microsoft financials exhibit
45 are four areas including: (1) variable operating costs which include labor, and can also include maintenance and repair costs which may or may not include fuel costs and supplies associated

with these maintenance costs that Respondent provides; (2) fixed costs like a fixed route or a fixed monthly fees for some technology subscriptions or fixed licenses or subscription costs such as video cameras on buses; (3) management fees which include any kind of administrative costs; and (4) Respondent's profit margin or its revenue from Microsoft less pricing rate costs to a client for providing their transportation services. (Tr. 81–83.) Domholdt says Microsoft and other clients pay for a variety of these costs and also Respondent may pick up and pay for the same depending on the client. Id.

Domholdt also described a nondisclosure agreement that Respondent has entered into with Microsoft that describes the use and disclosure of confidential information from Microsoft like the financials at issue here and requires that Respondent enter into a similar nondisclosure agreement with any of its Subcontractors who may have a need to know to engage any of the same confidential information in the course of their business relationship with Respondent contemplated in the Microsoft contract. (Tr. 80-81; Jt. Exh. 11 at 1.) In addition, the non-disclosure statement requires Respondent to protect the confidential information the same as it would if it belonged to Respondent. (Jt. Exh. 11.)

B. The Respondent and the Union Held 5 or 6 Bargaining Sessions in 2020 and 2021 During the Pandemic

Clemens also described how in early 2020, the Covid-19 pandemic caused everyone to stay home from work which took away the need for Respondent's union drivers since there were no Microsoft employees to drive or shuttle around. (Tr. 22–23.)

Despite the changed work conditions caused by the pandemic, Respondent told Clemens that Microsoft graciously elected to continue to pay its vendors, including Respondent and all of its union employee drivers, dispatchers and bus washers, etc. the entire time with no break in time until Microsoft returned to working one week at Microsoft campus and 3 weeks at home per month in 2022. (Tr. 22–23.)

Beginning in June 2020, the Respondent and the Union met approximately 5 or 6 times to bargain over a new CBA or extension. (Tr. 24–25.) The last bargaining session occurring in July 2021. Id.

C. The Union's October 30, 2020 Request for Information to Employer Re: The Microsoft Contract

On October 30, 2020, Stewart sent Domholdt and copied Clemens, and union members Rendelman and Tarantino, the Union's initial request for information for the purpose of administering and policing the Union's current CBA with Respondent that included 17 categories of information that the Union sought in connection with all employees in the bargaining unit. (Oct. 30 RFI). (Tr. 25–26; Jt. Exh. 3.) Category 3 of the October 30 RFI specifically asked that Respondent provide the Union with the Microsoft contract: "The current contract between Microsoft and [Respondent] MV Transportation." Id. Stewart requested that the information be provided to her by November 4, 2020. ((Tr. 50; Jt. Exh. 3.)

On November 5, 2020, Domholdt emailed Stewart and Clemens and copied Crowder of Respondent, a partial response to the October 30 RFI which provided the Union with most of the requested information and with respect to the Category 3 request, Respondent responded that: “Response forthcoming.” (Tr. 26–27, 42, 83–84; Jt. Exh. 4 at 2.)

Later that same afternoon, Domholdt writes to Stewart and Clemens and copies Crowder, Moujabber, and Aaron Edwards (Edwards), the following as to the Union’s Category 3 request for the entire Microsoft contract in its October 30 RFI:

In response to the Union’s request for the current contract between Microsoft and MV Transportation, the Employer believes that such information is confidential information and MV is precluded from sharing such contract without violating the terms of an NDA. The parties’ contract has a confidentiality provision which precludes MV from disclosing information contained within the current contract as it is confidential information and subject to a nondisclosure agreement. To the extent that the Union is looking for specific information in the current contract between Microsoft and MV Transportation please let me know what specific information the Union is looking for so that we can attempt to reach an accommodation. If the Union can provide us with the information that they are seeking than [sic] we can determine if this information is contained within the current contract. If such information is contained within the current contract we can work with the Client to determine whether this information could be provided without MV Transportation violating the confidentiality provisions contained within the current contract and/or the Employer’s nondisclosure agreement.

(Tr. 42, 84–85; Jt. Exh. 4 at 1.)

The Union did not pursue obtaining the entire Microsoft contract at that time in November 2020 and the Union did not provide Respondent with any specific email response to Domholdt’s November 5, 2020 email. (Tr. 27–28, 42–43, 85–86.)

Respondent did not provide the Microsoft contract to the Union in response to the October 30 RFI. (Tr. 27.)

D. The Union and Respondent Continued to Conduct Bargaining Sessions in June 2021 to the Point of Discussion of Economic Issues

At some point in CBA negotiations in 2021, Clemens opines that the Union moved on to economic issues and wanted to see the Microsoft contract’s financial information so that the Union could adjust its own wage raise request from Respondent for its drivers accordingly based on the amount of wage raise that Respondent was receiving from Microsoft. (Tr. 27–28.) Domholdt did not recall meeting with the Union for any bargaining sessions between November 2020 and June 15, 2021, primarily because Microsoft had a closed campus due to the pandemic and both sides were just waiting for the pandemic to end. (Tr. 86.)

At a June 16 bargaining session, the parties met at the union hall for 4–5 hours. (Stip. Fact #1; Tr. 29.) Clemens recalled that there were specific discussions about wages for drivers and other Union employees. (Tr. 28-29, 59.)

For the Respondent at the June 16 bargaining session were Domholdt, Crowder, Borden, Edwards, and Moujabber, each a supervisor and agent within the meaning of Section 2(11) and (13) of the Act. (Stip. Fact Nos. 2 and 3.) In attendance at the same bargaining session for the Union were Clemens, Stewart, Jake Williams (Williams) and Rendelman. (Stip. Fact # 4.)

At this meeting, the Union presented its opening proposal—Economic Proposal #15, Article 21, Wages comprised of a \$2000 signing bonus for each Union employee and a \$10-increase in hourly wage rates as of July 1, 2021, with an additional \$5-increase in hourly pay each year for the next 2 years on July 1, 2022, and July 1, 2023. (Stip. Fact# 5; Tr. 29–30, 44–45, 67, 87–88; Jt. Exh. 5.)

Domholdt opines that this \$20-per-hour proposed raise over 3 years was effectively more than \$20 per hour due to the drivers and staff having their wage scales adjusted 2 times a year—once on the CBA anniversary and again on a driver’s hire date anniversary. (Tr. 88.)

Domholdt responded to this union proposal for Respondent calling it “ridiculous” or “absurd” and that there was no money for raises or that Respondent had no money for any union employee raises. (Tr. 30–31, 45, 88.) Domholdt reasoned that the Union was proposing a 50-percent wage raise in year one and 25 percent raises in the next 2 years and since Microsoft’s campus was closed for the pandemic yet Microsoft was paying the union employees to not drive and to stay home, such a wage raise proposal was quite unreasonable under the circumstances. (Tr. 88–89.)

Clemens further recalls that Domholdt specifically told him that “there was no money built into the Microsoft contract for raises” in June or July 2021. (Tr. 45.)

Stewart recorded this same conversation in her June 16 bargaining notes which provide that Clemens brought up “raises” or employee wage increases to Domholdt at the June 16, 2021 bargaining session and Domholdt “SAID THERE ARE NO RAISES IN THE MICROSOFT FINANCIALS.” (Tr. 59–62; GC Exh. 2 at 2.) (Emphasis in original.)

Clemens opined that the Union understood Domholdt’s “Respondent had no money” comment to mean that their client, Microsoft, had not provided Respondent with any money for raises in the current Microsoft contract, so, as a result, the Union was also not going to receive any wage raises. (Tr. 31.)

Clemens confidently recalled that Domholdt specifically told him that “there’s no money built in for [wage] raises” in the current Microsoft contract. (Tr. 31, 45.)

Domholdt attempts to downplay or diminish his comment that there is no money for union raises flowing from the Microsoft contract by explaining at hearing that the Microsoft

contract was not providing enough new revenue to support a \$10-per-hour raise in response to the Union's wage raise proposal on June 16, 2021. (Tr. 89-90.)

Domholdt next attempts to argue that Respondent's ability to pay the Union wage raises has little or no connection to the Microsoft contract which is a non-factor when he states that whatever revenue that Microsoft provides Respondent is really irrelevant for bargaining purposes such that if Microsoft gives Respondent a 3-percent increase in revenue, Respondent is not bound to give the Union a 3-percent wage raise because Respondent could give the Union more or less than 3 percent. (Tr. 89-92, 94-95.) Domholdt says that, instead, the decision about any wage increase to the Union comes from Respondent's corporate department in Dallas and is dictated by a budget worked out by Domholdt with his leadership team and not by the Microsoft contract. Id.

I reject this explanation from Domholdt that the Microsoft financials are irrelevant to the parties' bargaining here because Respondent took the position that wage raises for an extended CBA with the Union were dependent and flowed from revenue increases contained in the Microsoft financials. Domholdt specifically told the Union that Respondent would not offer any wage raises for the extended CBA because there are no raises in the Microsoft contract financials. Moreover, past relations between Respondent and Microsoft show that Respondent is so dependent on its continuing relationship with Microsoft that it follows Microsoft's requests exactly without question and it is not unreasonable for the Union to believe that Respondent can afford to flow part or all of its wage raises contained in the Microsoft financials to the Union. Once again, Respondent has honored Microsoft's requests whether it be to remove an employee or provide increased wage rates to Union employees. (Tr. 20-24.)

Next, they talked about a counter-proposal but the conversation went no further at this June 16 bargaining session. (Tr. 31.)

On June 21, the parties met again via Zoom for another bargaining session and this meeting lasted approximately 1-2 hours. (Stip. Fact # 6; Tr. 31-32.)

At this meeting, Respondent passed on a wage proposal to Clemens via email. (Stip. Fact # 7.) Domholdt presented for Respondent a proposal to the Union of a purported 2 percent wage increase across the board for all union employees. (Tr. 32-33, 46; Jt. Exh. 6 at 11.)

Clemens next explains that the Union took Respondent's latest wage proposal to be inconsistent or in conflict from what Respondent had earlier represented about wage increases between Respondent and the Union and Respondent and Microsoft in the current Microsoft contract financials. (Tr. 32-33.) First, Respondent said there was no money built into the Microsoft contract financials to provide raises to Respondent or the Union—no pay increases but, soon thereafter, Respondent is saying they can afford to offer a 2-percent pay increase. (Tr. 33, 45-46; Jt. Exh. 6 at 11.)

When the Union actually examined the specifics of Respondent's purported "2 percent pay increase" proposal, it discovered that the wage raises were actually less than 2 percent, more

like 1.5-percent wage raises, when it ran the math in the proposal.⁴ (Stip. Fact # 8; Tr. 33, 46, 91; Jt. Exh. 6 at 4–5, 11.) Thus, Respondent was once again being untrue in its bargaining negotiations with the Union where its purported 2 percent wage raise proposal turned out to be only a 1.5 percent wage increase. Given Respondent’s fast and loose bargaining positions in 2021, I find that the Microsoft contract financials labor information is relevant and necessary for the Union’s bargaining purposes.

E. The Union’s More Specific July 2 Request for Information to Employer Re: The Microsoft Contract’s Financials

By late June 2021, the Union had received mixed messages from Respondent’s changed proposals as to the range of wage increase options available for the parties to bargain for a new CBA and the Union decided that it needed to obtain the Microsoft contract financial information to see what wage increases Microsoft was providing Respondent in the current Microsoft contract to best be able to negotiate wage increases with Respondent for the current CBA negotiations. (Tr. 33, 47–48, 50, 62–63.) Moreover, the Microsoft contract financials information became necessary to receive for bargaining purposes immediately after the two June bargaining sessions when Respondent came back and told the Union that they was no money for raises in 2021 along with its other two wage raise offers. (Tr. 54, 62–63.)

On July 2, Stewart prepared another request for information to Domholdt and Respondent (the July 2 RFI), this time due to its receiving mixed messages from Respondent as to its ability to afford wage increases as dictated by its Microsoft contract, a more specific request for information was prepared that, while similar to the October 30 RFI, was more limited to the Microsoft contract financials than requesting the entire Microsoft contract, and with its July 2 RFI, the Union asked for:

... a copy of Microsofts [sic.] Financials regarding their contract with [Respondent] MV Transportation. At the last bargaining meeting it was stated that Microsoft didn’t include any raises for the contract so we would like proof regarding this.

(Tr. 33, 47–48, 62–63; Jt. Exh. 7.)

Clemens and Stewart opine that the Union’s July 2 RFI did not specifically seek Respondent’s fuel costs, maintenance costs, or management fees as part of the Microsoft contract financials information that the Union was requesting be produced from Respondent, the Union was just looking for how much of a wage raise was built into the Microsoft contract financials between Microsoft and Respondent. (Tr. 40–41, 50, 62– 63, 65, 91; Jt. Exh. 7.)

⁴ For example, the Respondent’s proposed raise at ratification for a 2-year CDL Vehicle driver was to go from a current rate of \$26.52 to \$26.92, an hourly increase of \$0.40 or 1.51 percent and the proposed wage increase for a 6-year dispatch or payroll clerk would increase from a current hourly rate of \$22.10 to \$22.43, an hourly increase of \$0.33 or 1.49 percent. (Jt. Exh. 6 at 4–5. See also Stip. Fact # 8.)

Stewart also admitted that the Union was seeking information in the Microsoft financials related to the amount of raises that might have been built into the Microsoft contract. Stewart further admits that the Union never specifically notified Respondent about this specific request other than asking for the Microsoft financials. (Tr. 66.)

As of the July 2 RFI, the parties had already scheduled another bargaining session for July 14, 2021. (Tr. 33.)

On July 13, Stewart emails Domholdt regarding the July 2 RFI and Microsoft Financials and Stewart tells Domholdt that the Union needs the Microsoft contract financial information for bargaining purposes and asks Domholdt whether he will be providing this information ahead of the July 14 bargaining session as the Union “believes we are entitled to the information because it was discussed at the bargaining table that Microsoft did not have raises for employees in the contract between MV and Microsoft.” (Tr. 46–47, 65, 91; Jt. Exh. 8 at 5.)

Later at 11:30 a.m. on July 13, Domholdt responds to Stewart and the Union saying to all:

I believe the Union made the same request a few months ago and the Company denied the request for the revenue agreement (including Microsoft Financials) as being confidential and propriety information. Without waiving such objection, we can confirm that the revenue contract between MV and Microsoft provides for a 3 percent increase for drivers' wages and 2.5 percent increase for hourly employees' wages on July 1st. Let me know if this is a satisfactory response that will allow for the parties to continue bargaining this week or if the Union requests that negotiations be postponed based on this response. I have a flight scheduled for 4:00 PM and want to assess whether we are still having negotiations.

(Tr. 34, 46–48, 65, 93; Jt. Exh. 8 at 4.)

Clemens convincingly opined that on July 13, he did not believe Domholdt when he communicated these new wage increase offers to the Union that the Microsoft contract purportedly provides the limited specific wage raise of 3 percent for drivers and 2.5 percent for hourly employees on July 1, 2021. (Tr. 51.) Instead, Clemens and the Union wants to view the Microsoft contract financials which the Union believed contain the financial information requested in the July 2 RFI including the exact wage rate increases for these union employees. Id.

Similarly, Stewart opines that the Union does not always automatically believe or trust that financial offers from Domholdt or Respondent are necessarily backed up by the truth such as Domholdt's July 13 statements about wage increases provided by Microsoft to Respondent because the Union always would like proof or evidence of the truth which is why the Union was seeking the Microsoft financials from Respondent. (Tr. 72–73.)

Clemens responds to Domholdt at 11:53 a.m. that same day saying that: “We would like to get a copy of the [Microsoft contract] financials for last contract with Microsoft and the

current one. We are entitled to this according to the NLRA. Will you provide it?” (Jt. Exh. 8 at 4.)

At 12:29 p.m. on July 13, Domholdt responds to Clemens saying:

MV will not be providing the contracts between Microsoft and MV Transportation as the contracts are confidential and proprietary information. MV and Microsoft have agreed to strict non-disclosure agreements which do not allow for the dissemination of the information that the Union is requesting. The Company does not believe that the Union is entitled to this information under the National Labor Relations Act due to the confidential/proprietary nature of this information.
How would the Union like to proceed based on the above response and my previous email?

(Tr. 48; Jt. Exh. 8 at 3.)

At 12:35 p.m. on July 13, Clemens responds: “Patrick [Domholdt], to be clear we are not requesting the full contract just the financials.”⁵ (Tr. 34–35, 47–48; Jt. Exh. 8 at 3.)

At 1:34 p.m. on July 13, Domholdt asks Clemens whether the Union is still planning on meeting tomorrow and Thursday and, if so, whether the meetings will be onsite or on Teams? (Jt. Exh. 8 at 2–3.)

At 2:16 p.m. on July 13, Domholdt again emails Clemens and other union representatives proposing that the July 14 and 15 bargaining sessions go forward via Teams video rather than in person onsite “unless the Union is looking at postponing the entire negotiation session.” (Jt. Exh. 8 at 2.)

At 3:39 p.m., on July 13, Clemens responds to Domholdt writing: “Patrick, It just doesn’t seem like we get the same level of negotiations done when we are on Zoom/Teams.” (Jt. Exh. 8 at 2.)

At 4:38 p.m., on July 13, Domholdt responds saying:

Based on the Union’s stance that negotiations would be postponed if Microsoft financials would not be provided combined with our inability to provide that information, I rearranged my travel arrangements and cancelled my afternoon flight to Seattle. I think we can still get things accomplished via Teams if the Union is interested in meeting the next two days. Please let me know if you would like to meet via Teams and I can send out the appointment.

(Jt. Exh. 8 at 1.)

⁵ Clemens admits that he never told Domholdt that the specific information being sought by the Union with its July 2 RFI “was related only to wage rate increases from Microsoft” provided in the Microsoft contract. Tr. 49-50.

At 5:21 p.m., July 13, Clemens responds to Domholdt's proposal saying "we have received conflicting answers on the financials. We need some more information before we can meet. Based on that we would like to cancel these two days and reschedule." (Tr. 32–35, 48–49; Jt. Exh. 8 at 1.)

On July 14, the Union filed its charge in this case against the Respondent for not timely and fully responding to the Union's July 2 RFI. (Tr. 35.)

Domholdt was not believable when I observed him stiffly denying that he ever told Clemens and Stewart at the June 16 bargaining session that there was no money in the Microsoft financials for wage raises to flow-through to the union employees despite Clemens' and Stewarts' conflicting testimonies and Stewarts bargaining notes from the June 16 bargaining session. Stewart testified in a convincing manner when she said that with her experience bargaining with Domholdt and Respondent in the past, she opines that the Union does not always automatically believe or trust that financial offers from Domholdt or Respondent are necessarily backed up by the truth such as Domholdt's July 13 statements about wage increases provided by Microsoft to Respondent because the Union always would like proof or evidence of the truth which is why the Union was seeking the Microsoft financials from Respondent. (Tr. 72–73.) In addition, Domholdt never denied offering the Union 2- percent pay raise across all categories of union employees which, in reality turned out to be a lesser 1.5-percent wage raise offer.

On or after July 14, Respondent's representatives asked Clemens if they could get back to the bargaining table and resume negotiations for a new CBA and Clemens responded telling them that the Union needs the information requested in the July 2 RFI—the Microsoft contract financials before the Union can return to the bargaining table. (Tr. 35–36.)

As of January 24, 2022, Respondent has not produced any documents to the Union that are responsive to the July 2 RFI. (Stip. Fact # 17, Jt. Exh. 12; Tr. 63.) The document responsive to the Union's July 2, 2021 RFI consists of approximately 33 pages consisting of spreadsheets and charts (Stip. Fact #16, Jt. Exh. 12) and is otherwise known as unredacted Exhibit C to the Microsoft contract. (Jt. Exhs. 9 and 10.)

At no time after receiving the July 2 RFI did Respondent ever ask Clemens or the Union to clarify what specifically the Union was seeking with its July 2 RFI or inform the Union that he did not know what specific information the Union sought. (Tr. 69-70, 100-101; Jt. Exh. 8.) Clemens explained that the Union was seeking information for increased moneys contained in the Microsoft contract provided to Respondent by Microsoft from the previous contract between the two of them as a total and as wage increases the Union might like to use in bargaining with Respondent or such information in the Microsoft financials related to raise increases built into the Microsoft contract. (Tr. 102–103.)

In December 2021, Respondent replied to Clemens that "this could take a long time and go through appeals and be drawn out." (Tr. 36.)

There have been no more bargaining sessions since the last one on June 21, 2021, because the Union needs the Microsoft contract financial information and without proof of what is really available for raises, the Union is not in a position to bargain. (Stip. Fact #13; Tr. 36–39.) Specifically, the Union wants to see:

increases in pay for MV [Respondent] from Microsoft. As far as hourly, what they'll pay hourly for a truck roll. What they pay in total as a contract compensation. Finances, so that we [the Union] can compare with the previous contract how much operations increase MV [Respondent] got as a whole.

(Tr. 39.)

As of the day of hearing in late January 2022, Clemens still believes that Domholdt is not being truthful given his mixed positions communicated to the Union in June and July 2021, which vacillate from “Respondent had no money” for wage increases to a 2-percent wage increase offer that turned out to be less than 2 percent, to the 3-percent and 2.5-percent offers emailed on July 13, 2021. (Tr. 51.) Clemens further explains that the Union needs to see the Microsoft contract financials so that it can make an educated response to Respondent’s mixed wage proposals and Clemens notes that Microsoft has been very generous in the past so Clemens does not want to make a wage proposal to Respondent without seeing the Microsoft contract financials information. Id.

In or about December 2021, when another COVID-19 surge was present, Clemens and Stewart recalled that since the Union filed its charge in this case, the Respondent has offered the Union to come into its offices and view the Microsoft contract financials there and asked Respondent any questions that the Union might have about the information. (Tr. 36, 51–52, 66, 96–98.) The Union rejected this accommodation from the Respondent because the Union did not want to be in a fishbowl in the midst of the ongoing Covid-19 pandemic and also because its bargaining team member Rendelman was unavailable and out-of-town at a specialized assignment for Respondent that Respondent kept extending. (Tr. 52–53, 55–56, 66, 96–98; Jt. Exh. 12.)

Clemens and Stewart also noted that the Respondent also offered the Union to view the Microsoft contract financials via Zoom video conference but the Union also rejected this accommodation offer because the Union wanted more than a quick glimpse on a computer screen to actually review wage increase percentages in the Microsoft contract. (Tr. 53, 66–67, 96–98.) Clemens did not recall whether Respondent placed any time limitations for the Union’s review of the Microsoft contract financials using Zoom video technology. (Tr. 54–55.)

The parties have, after the filing of the charge in this matter on July 14, engaged in bargaining over how to protect the confidentiality of the information requested by the Union on July 2, 2021. (Stip. Fact #14, Jt. Exh. 12.) Clemens recalled having several communications with Domholdt or someone else at Respondent where Respondent has proposed that the Union sign a confidentiality agreement to protect the information from disclosure and Clemens told them that the Union would be happy to sign such an agreement to accommodate and alleviate their confidentiality concerns. (Stip. Fact # 14, Jt. Exh. 12; Tr. 53, 56.)

The Union has not previously breached a confidentiality agreement with Respondent, nor otherwise provided grounds to indicate it will violate a confidentiality agreement with Respondent. (Stip. Fact # 15, Jt. Exh. 12.)

III. DECISION AND ANALYSIS

A. Respondent's Refusal to Produce the Microsoft Financials Subject to a Non-Disclosure Agreement In Response to the Union's July 2 RFI Was Insufficient and Unlawful In This Case

1. The Microsoft contract financials information is relevant and necessary to the Union

Pursuant to Section 8(a)(5) of the Act, each party to a bargaining relationship is required to bargain in good faith. Part of that obligation is that both sides are required to furnish relevant information upon request. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). The employer's duty to provide relevant information exists because without the information, the union is unable to perform its statutory duties as the employees' bargaining agent. Like a flat refusal to bargain, "[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act" without regard to the employer's subjective good or bad faith. *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.*, 237 NLRB 747, 751 (1978), *enfd.* 603 F.2d 1310 (8th Cir. 1979). In determining possible relevance, the Board does not pass upon the merits, and the labor organization is not required to demonstrate that the information is accurate, not hearsay, or even ultimately reliable. *Postal Service*, 337 NLRB 820, 822 (2002).

Because the duty to furnish information is meant to further the union's ability to represent the bargaining unit, information pertaining to unit employees' terms and conditions of employment, such as their wages and hours of work, is presumptively relevant to the union, and the burden is on the employer to rebut the relevance of the information requested. *Bacardi Corp.*, 296 NLRB 1220, 1223 (1989). See also *Ohio Power Co.*, 216 NLRB 987, 991 (1975), *enfd.* 531 F.2d 1381 (6th Cir. 1976). Here, I find that the contract between Respondent and Microsoft which contains the requested Microsoft contract financials, is not presumptively relevant because it does not directly relate to unit employees' terms and conditions of employment. *G4S Secure Solutions*, 369 NLRB No. 7, slip op. at 1. (2018). (See also Jt. Exhs. 9 – 11.)

To determine relevance, the Board uses a "liberal, discovery-type standard" that requires only that the requested information have "some bearing upon" the issue between the parties and be "of probable use to the labor organization in carrying out its statutory responsibilities." *Public Service Co. of New Mexico*, 360 NLRB 573, 574 (2014); *Postal Service*, 332 NLRB at 636. As the Supreme Court explained, "[i]f such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy." *Truitt*, 351 U.S. at 152–153.

As stated above, the requested financial information is not presumptively relevant. To establish the Union's entitlement to the information, the General Counsel must show the Union's

July 2 RFI was in response to an assertion the Respondent was unable to pay the Union's demands, or that it was otherwise relevant. *NLRB v. Truitt Mfg. Co.*, supra; *AMF Trucking & Warehousing*, 342 NLRB 1125, 1126 (2004), *National Extrusion & Mfg. Co.*, 357 NLRB 127, 128 (2011). As explained below, I find that the Respondent stated it was unable to meet the Union's financial conditions or demands, and in this case the General Counsel has otherwise established relevancy of the Microsoft contract financials.

Notably, once the burden of showing the relevance of nonunit information is satisfied, the duty to provide the information is the same as it is with presumptively relevant unit information. Depending on the circumstances and reasons for the union's interest, information that is not presumptively relevant may have "an even more fundamental relevance than that considered presumptively relevant." *Prudential Insurance Co. of America v. NLRB*, 412 F.2d 77, 84 (2d Cir.), cert. denied 396 U.S. 928 (1969). "[A]n employer's duty to bargain includes a general duty to provide information needed by the bargaining representative to assess claims made by the employer relevant to contract negotiations." *Caldwell Mfg. Co.*, 346 NLRB 1159, 1159–1160 (2006).

Whether an employer's refusal to provide requested financial documents violates the duty to bargain in good faith "turns upon the particular facts of a case." *Id.*; see also *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152–153 (1956). Turning to the Union's request for information regarding financial payments received from the Microsoft contract for wages, I find that the Respondent violated Section 8(a)(5) by failing to provide this information to the Union. The Respondent argues that it has no obligation to provide this financial information because a presumption of relevancy does not apply "to financial data about its contract with Microsoft that does not pertain to unit employees' wages and benefits—if any." (R Br. at 8–9.)

The Respondent is correct that "generally, an employer is not obligated to open its financial records to a union unless the employer has claimed an inability to pay." *Kitsap Tenant Support Services, Inc.*, 366 NLRB No. 98 1, at 7 (2018) (citing *Caldwell Mfg. Co.*, 346 NLRB 1159, 1160 (2006); *Stella D'oro Biscuit Co., Inc.*, 355 NLRB 769, 770–773 (2010)). The Board in *Kitsap Tenant Services* found that financial payments that the employer received from the State of Washington "would have aided the [u]nion in determining whether the [respondent] had any room for potential movement on wage rates—a crucially important bargaining subject—based on current appropriations." *Kitsap Tenant Services*, supra. (Footnote omitted.)

Similarly, in this case, the Respondent originally asserted an inability to pay when Domholdt told the Union at the June 16 bargaining session that because there were no raises or wage increases provided to Respondent in the Microsoft contract financials, there could be no wage increases to the Union during the life of the contract under negotiation as part of the bargaining process. More significantly, by July 2021, the Union had reduced the scope of the financial information it was seeking from Respondent from the entire Microsoft contract to the more specific Microsoft financials and the Union did not seek general access to the Respondent's complete financial records or the entire Microsoft contract. It only asked for the Microsoft financials which Domholdt and Respondent were well aware involved the 33-page Exhibit C attached to the Microsoft contract.

The Respondent disputes the relevance of the requested Microsoft contract financial information here and cites to *G4S Secure Solutions*, 369 NLRB No. 7, slip op. at 1–2 (2018), in support of its position. (R Br. at 8–10.) The factual background in *G4S Secure Solutions*, is distinguishable because in that case the Board found that a contract between an employer’s predecessor and third party Bechtel was irrelevant because the supporting evidence failed to establish the contract’s relevance and there needs to be a reasonable belief supported by objective evidence for requesting the information which must go beyond mere suspicion. *Id.* Specifically, in *G4S Secure Solutions*, the Board found that an email and a memorandum from this agency’s Advice department were too speculative and “merely surmised that the contract might include provisions that affect unit employees’ terms and conditions of employment” and this evidence “did not set forth facts supporting a reasonable belief that the contract actually included such provisions.” *Id.*

In this case, Respondent is not a successor to a predecessor with a contractual relationship with Microsoft. Instead, Respondent has a direct and ongoing contractual relationship with Microsoft so the relationships here are less tenuous to analyze relevance for bargaining purposes. More significantly, Respondent through Domholdt confirms that the Microsoft contract financials requested by the Union actually can affect unit employees’ terms and conditions of employment—their wages when on July 13, Domholdt admits to the Union that:

we can confirm that the revenue contract between MV [Respondent] and Microsoft [the Microsoft contract financials] provides for a 3 percent increase for drivers’ wages and 2.5 percent increase for hourly employees’ wages on July 1st. Let me know if this is a satisfactory response that will allow for the parties to continue bargaining this week or if the Union requests that negotiations be postponed based on this response....

(Tr. 34, 46–48, 65, 93; Jt. Exh. 8 at 4.)

Thus, I find that Respondent relies on the requested Microsoft contract financials to generate its own contract wage proposals to the Union and that the information requested in the July 2 RFI is relevant and necessary to the Union for bargaining purposes. Moreover, Microsoft’s control over Respondent is undisputed and includes exercising power over Union employees’ wage terms and conditions.

Also, given the justified lack of trust from a history of unreliable statements from Domholdt to the Union along with Respondent’s fluctuating offers at bargaining in the summer of 2021, it is objectively reasonable that the Union would insist on viewing Microsoft’s contract financials which Respondent admits contain relevant information that affect unit employees’ wages to use in further bargaining and to determine an appropriate range of wage raises that Respondent can afford in view of what the Microsoft contract financials provide. I further find that Respondent’s ability to offer wage raise movement was completely dependent on revenue that Respondent was expecting to receive from Microsoft as contained in the Microsoft financials. As a result, I further find that the Microsoft financials are relevant and necessary in this case and will aid the Union in determining whether the Respondent has any room for

potential movement on wage rate raises based on Microsoft's current appropriations to Respondent.

2. While confidential in substance, Respondent has not provided a reasonable accommodation to the Union so it can review the Microsoft contract financials

In *American Baptist Homes of the West*, the Board held that when an employer asserts a confidentiality interest in protecting witness statements from disclosure, the appropriate standard is the *Detroit Edison v. NLRB* balancing test, 362 NLRB 1135, 1139–1140 (2015). Under that standard, the Board balances a union's need for requested relevant information against an employer's established legitimate and substantial confidentiality interests. *Id.* However, establishing a legitimate and substantial confidentiality interest requires more than a generalized desire to protect the integrity of employment investigations. *Id.* at 1137. Rather, an employer must "determine whether in any give[n] investigation witnesses need protection, evidence is in danger of being destroyed, testimony is in danger of being fabricated, [or] there is a need to prevent a cover up." *Id.* (quoting *Hyundai America Shipping Agency*, 357 NLRB 860, 873–874 (2011), *enfd.* in relevant part 805 F.3d 309 (D.C. Cir. 2015)).

Assuming that an employer establishes a legitimate and substantial confidentiality interest that outweighs a requesting union's need for the information, the employer cannot simply refuse to provide the information, but must seek an accommodation that would allow the requester to obtain the information it needs while protecting the party's interest in confidentiality. *Id.* (citing *Borgess Medical Center*, 342 NLRB 1105, 1106 (2004)). The employer is only obligated to offer an accommodation. *Id.* at 1137 fn. 7. Offering to provide information on an alternative timeline may be seen as an offer of an accommodation. *FCA US, LLC*, 371 NLRB No. 32, slip op. at 5 (2021). If the union is dissatisfied with the offer, it is then required to respond and explain why the proffered accommodation is insufficient." *Id.* at 1137 fn. 7 (citation omitted).

Here, I find that the Respondent has established disclosure of the Microsoft contract financial information would have an impact on its ongoing relationship with Microsoft Corporation and I find that the Respondent has established a confidentiality concern of a legitimate and substantial nature. See *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979).

Thus, in acknowledging the Respondent's legitimate interest in seeking to preserve the confidentiality of the Microsoft contract financials, I further find that Respondent's interest does not outweigh the Union's statutory right to relevant information such that the Respondent may not withhold the Microsoft contract financial information entirely.

While the Respondent timely raised its confidentiality defense to quickly turning over the Microsoft contract financials, Respondent offered no reasonable accommodation on its own, however, such as making the requested information subject to a protective order or confidentiality agreement. Instead, Respondent completely refused to furnish the requested Microsoft contract financials. See *General Dynamics Corp.* 268 NLRB 1432, 1433 (1984)(Board found employer's confidentiality claims to be legitimate but held employer's flat refusal to provide requested documents violated the Act.)

A party claiming confidentiality must tell the union of its claim and bargain to seek accommodation of its interests. See *Minnesota Mining & Mfg. Co.*, 261 NLRB 27 (1982). In that event, however, the employer must offer and bargain in good faith over a reasonable accommodation, such as redacting the information and/or restricting its use. The burden is on the employer not the union to propose a precise option to providing the information unedited. See *A-1 Door & Building Solutions*, 356 NLRB 499, 500–501 (2011); and *Borgess Medical Center*, 342 NLRB 1105, 1106 (2004). See also *U.S. Testing Co. v. NLRB*, 160 F.3d 14, 20–21 (D.C. Cir. 1998), and cases cited there.

I find that while the Respondent has legitimate confidentiality concerns surrounding the production of the Microsoft contract financials, the Union has met these concerns by offering to sign a confidentiality or non-disclosure agreement and there is no evidence that the Union could not be expected to honor such an agreement. See *Stella D'oro Biscuit Co.*, supra at 773; see also *Island Creek Coal, Co.* 289 NLRB 851, 851 fn. 1 (1988); Stip. Fact Nos. 14 and 15. In response to the Union's reasonable offer to sign a confidentiality agreement to obtain the Microsoft contract financials, a 33-page exhibit, the Respondent simply rejected it with no reasonable explanation.

The only offered accommodation alternatives from the Respondent were incomplete and unreasonable. These accommodation offers came after the charge in this case was filed and while the Union communicated its open willingness to sign a nondisclosure agreement or protective order to protect the confidential information. The Respondent's actions toward accommodation fell far short of acceptable under the unique circumstances caused by the ongoing COVID-19 pandemic. More importantly, the Respondent rejected the Union's reasonable offer to enter into a nondisclosure agreement or protective order without any legitimate reason for doing so as stated above, the Union has no history and there was no evidence presented showing that the Union would breach such an agreement or protective order.

For these reasons, I find that the Respondent violated Section 8(a)(5) and (1) of the Act as alleged in the complaint by failing to provide an adequate accommodation or simply accepting the Union's suggestion to enter into a nondisclosure agreement or protective order and provide the Union with the 33 pages of Microsoft contract financials.

CONCLUSIONS OF LAW

1. The Respondent, MV Transportation, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Charging Party, Communication Workers of America Local 7800, affiliated with the International Communications of America, is a labor organization within the meaning of Section 2(5) of the Act.
3. At all material times the Union has been the designated exclusive collective-bargaining representative of the following bargaining units of the Respondent's employees:

All full-time and part-time drivers, dispatchers, utility workers, payroll clerks, operations clerks, and ambassadors at MV Transportation, Inc. Division 105, but excluding all other mechanics, maintenance employees, guards, supervisors and road supervisors as defined under the National Labor Relations Act.

4. The Respondent violated Section 8(a)(5) and (1) of the Act as alleged in the complaint by failing since July 2, 2021, to provide in a timely manner, relevant and necessary information to use in the bargaining process comprised of the Microsoft contract financials, a 33-page document.
5. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices and has violated Section 8(a)(5) and (1) of the Act, I shall order it to cease and desist, to recognize and bargain on request with the Union and, to take certain affirmative action designed to effectuate the policies of the Act.

Upon execution by the Union of its offered confidentiality agreement, the Respondent shall immediately provide the Union with the information that it has to date failed and refused to provide that was requested by the Union in its July 2 RFI to the Respondent, as described in this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

Respondent, MV Transportation, Inc., at Redmond, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Refusing to bargain collectively with Communication Workers of America, Local 7800 ("Union"), as the exclusive representative for purposes of collective bargaining for employees in the following unit:

All full-time and part-time drivers, dispatchers, utility workers, payroll clerks, operations clerks, and ambassadors at MV Transportation, Inc. Division 105, but

⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

excluding all other mechanics, maintenance employees, guards, supervisors and road supervisors as defined under the National Labor Relations Act.

(b) Refusing to timely provide the Union with information that is relevant and necessary to its role as Respondent's exclusive collective-bargaining representative, including financial information for bargaining; and

(c) In any like or related manner interfering with, coercing, or restraining employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon execution by the Union of its offered confidentiality agreement, immediately provide the Union with copies of the information it requested on July 2, 2021, concerning the Microsoft contract financial information.

(b) Within 14 days after service by the Region, post at its Redmond facilities copies of the attached notice marked Appendix⁷, on forms provided by the Regional Director for Region 19 after being signed by the Respondent's authorized representative, for 60 consecutive days in conspicuous places all places where notices to employees are customarily posted, including 18690 NE 73rd St, Redmond WA 98052, the facility located at ROC-18690 NE 73rd Street, Redmond, WA 98052, and the facility located at PIT-4042 148th Ave NE, Redmond WA 98052.⁸ In addition to physical posting of notices, Respondent shall email copies of the notices to all employees employed by the Employer at its Redmond facility and distribute the notices electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means; and

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. May 24, 2022



Gerald Michael Etchingham
Administrative Law Judge

⁷ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if Respondent customarily communicates with its employees by electronic means.

⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the National Labor Relations Board,
an Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice:

FEDERAL LAW GIVES YOU THE

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

Communication Workers of America, Local 7800 (“Union”), is the exclusive collective bargaining representative of our employees in the following unit (“Unit”):

All full-time and part-time drivers, dispatchers, utility workers, payroll clerks, operations clerks, and ambassadors at MV Transportation, Inc. Division 105, but excluding all other mechanics, maintenance employees, guards, supervisors and road supervisors as defined under the National Labor Relations Act.

WE WILL NOT refuse to provide the Union with information that is relevant and necessary to its role as your bargaining representative, including financial information pertaining to our contract with Microsoft.

WE WILL, upon execution by the Union of its offered confidentiality agreement, immediately provide the Union with copies of the information it requested on July 2, 2021, concerning the financial information in our agreements with Microsoft Corporation.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

MV TRANSPORTATION, INC.

(Employer)

Dated _____ **By** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667- 6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/19-CA-279935> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284.